

KANSAS JUVENILE JUSTICE CODE

SECTION 7

CHAPTER 38—MINORS ARTICLE 23—REVISED KANSAS JUVENILE JUSTICE CODE

38-2380. Orders appealable by juvenile; appeal of departure sentence, procedure. (a) *Order authorizing prosecution as an adult or extended jurisdiction juvenile prosecution.* (1) Unless the juvenile offender has consented to the order, a juvenile offender may take an appeal from an order authorizing prosecution as an adult. The appeal shall be taken only after conviction as an adult and in the same manner as criminal appeals, except that where the prosecution has resulted in a judgment of conviction upon a plea of guilty or *nolo contendere*, an appeal may be taken from the order authorizing prosecution pursuant to K.S.A. 2006 Supp. 38-2347, and amendments thereto, notwithstanding the provisions of subsection (a) of K.S.A. 22-3602, and amendments thereto.

(2) If on appeal the order authorizing prosecution as an adult is reversed but the finding of guilty is affirmed or the conviction was based on a plea of guilty or *nolo contendere*, the juvenile shall be deemed adjudicated to be a juvenile offender. On remand the district court shall proceed with sentencing.

(b) *Orders of adjudgment and sentencing.* The juvenile offender may appeal from an order of adjudication or sentencing, or both. The appeal shall be pursuant to K.S.A. 2006 Supp. 38-2382, and amendments thereto.

(1) Pending review of the sentence, the sentencing court or the appellate court may order the juvenile confined or placed on conditional release, including bond.

(2) On appeal from a judgment or conviction entered for an offense committed on or after July 1, 1999, the appellate court shall not review:

(A) Any sentence that is within the presumptive sentence for the crime; or

(B) any sentence resulting from an agreement between the state and the juvenile which the sentencing court approves on the record.

(3) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(A) Are supported by the evidence in the record; and

(B) constitute substantial and compelling reasons for departure.

(4) In any appeal, the appellate court may review a claim that:

(A) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(B) the sentencing court erred in either including or excluding recognition of prior convictions or adjudications; or

(C) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(5) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(6) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the placement. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(7) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(c) *Priority.* Appeals under this section shall have priority over other cases except those having statutory priority.

History: L. 2006, ch. 169, § 80; Jan. 1, 2007.

Source or Prior Law:
38-1681.

38-2381. Appeals by prosecution. (a) An appeal may be taken by the prosecution from an order:

(1) Dismissing proceedings when jeopardy has not attached;

(2) denying authorization to prosecute a juvenile as an adult;

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- (3) quashing a warrant or a search warrant;
- (4) suppressing evidence or suppressing a confession or admission; or
- (5) upon a question reserved by the prosecution.

(b) An appeal upon a question reserved by the prosecution shall be taken within 10 days after the juvenile has been adjudged to be a juvenile offender. Other appeals by the prosecution shall be taken within 10 days after the entry of the order appealed.

History: L. 2006, ch. 169, § 81; Jan. 1, 2007.

Source or Prior Law:
38-1682.

38-2382. Appeals; procedure. (a) An appeal from a district magistrate judge shall be to a district judge. The appeal shall be by trial *de novo* unless the parties agree to a *de novo* review on the record of the proceedings. The appeal shall be heard within 30 days from the date the notice of appeal was filed.

(b) Appeals from a district judge shall be to the court of appeals.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 82; Jan. 1, 2007.

Source or Prior Law:
38-1683.

38-2383. Temporary orders pending appeal; status of orders appealed from. (a) Pending the determination of an appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) While an appeal is pending, the district court may modify the order appealed from and may make temporary orders concerning the care and custody of the juvenile as the court considers advisable.

History: L. 2006, ch. 169, § 83; Jan. 1, 2007.

Source or Prior Law:
38-1684.

38-2384. Fees and expenses. When an appeal is taken pursuant to this code, fees of an attorney appointed to represent the juvenile offender shall be fixed by the district court. The fees, together with the costs of transcripts and records on appeal, shall be taxed as expenses on appeal. The court on appeal may assess the fees and expenses against the appealing party or order that they be paid from the county general fund. When the court orders the fees and expenses assessed against the appealing party:

(a) The fees and expenses shall be paid from the county general fund, subject to reimbursement by the appealing party; and

(b) the county may enforce the order as a civil judgment, except the county shall not be required to pay the docket fee or fee for execution.

History: L. 2006, ch. 169, § 84; Jan. 1, 2007.

Source or Prior Law:
38-1685.

38-2385. Certification of juvenile corrections officers; basic course of instruction; in-service training. (a) The commissioner may adopt rules and regulations establishing standards of training and provisions for certifying juvenile corrections officers.

(b) Except as provided in subsection (c), no person shall receive a permanent appointment as a juvenile corrections officer unless awarded a certificate by the commissioner which attests to satisfactory completion of a basic course of instruction. Such course of instruction shall be approved by the commissioner and shall consist of not less than 160 hours of instruction. The certificate shall be effective during the term of a person's employment, except that any person who has terminated employment with the commissioner for a period exceeding one year shall be required to be certified again.

(c) The commissioner may award a certificate which attests to the satisfactory completion of a basic course of instruction to any person who has been duly certified under the laws of another state or territory if, in the opinion of the commissioner, the requirements for certification in the other jurisdiction are equal to or exceed the requirements for certification in this state. The commissioner may waive any number of hours or courses required to complete the basic course of instruction for any person who, in the opinion of the commissioner, has received sufficient training or experience that such hours of instruction would be unduly burdensome or duplicitous.

(d) Every juvenile corrections officer shall receive not less than 40 hours of in-service training annually.

History: L. 2006, ch. 169, § 85; Jan. 1, 2007.

Source or Prior Law:
38-16,134.

38-2386. Law enforcement power. The superintendent of any juvenile correctional facility operated by the commissioner, all persons on the

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staff of the juvenile justice authority who are in the chain of command from the commissioner of juvenile justice to the juvenile corrections officer and every juvenile corrections officer, regardless of rank and every investigator, while acting within the scope of their duties as employees of the juvenile justice authority, shall possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner and may exercise such powers and duties anywhere within the state of Kansas. Such powers and duties may be exercised outside the state of Kansas for the purpose of maintaining custody, security and control of any person in the custody of the commissioner being transported or escorted by anyone authorized to so act. Such employees of the juvenile justice authority shall be responsible to and shall be at all times under the supervision and control of the commissioner of juvenile justice or the commissioner's designee.

History: L. 2006, ch. 169, § 86; Jan. 1, 2007.

Source or Prior Law:

38-16,135.

38-2387. Application to existing cases. (a) In addition to all actions concerning a juvenile offender commenced on or after January 1, 2007, this code also applies to proceedings commenced before January 1, 2007, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of a party, in which case the particular provision of this code does not apply and the previous code applies.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2007, that statute continues to apply to the right, even if it has been repealed or superceded.

History: L. 2006, ch. 169, § 87; Jan. 1, 2007.